

STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

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ON

LEGISLATION TO PROSCRIBE THE UNAUTHORIZED DISCLOSURE
OF INFORMATION IDENTIFYING CERTAIN INDIVIDUALS
ENGAGED OR ASSISTING IN FOREIGN INTELLIGENCE ACTIVITIES

MR. CHAIRMAN:

I WANT TO THANK YOU AND THE OTHER DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE FOR THE OPPORTUNITY TO DISCUSS LEGISLATION WHICH I CONSIDER TO BE URGENTLY NEEDED AND VITAL TO THE FUTURE SUCCESS OF OUR COUNTRY'S FOREIGN INTELLIGENCE COLLECTION EFFORTS.

I START THIS AFTERNOON FROM THE PREMISE THAT OUR EFFORTS TO COLLECT INFORMATION ABOUT THE PLANS AND INTENTIONS OF OUR POTENTIAL ADVERSARIES CANNOT BE EFFECTIVE IN A CLIMATE THAT CONDONES REVELATION OF A CENTRAL MEANS BY WHICH THOSE EFFORTS ARE CONDUCTED. THE IMPUNITY WITH WHICH MISGUIDED INDIVIDUALS CAN DISCLOSE THE IDENTITIES OF OUR UNDERCOVER OFFICERS AND EMPLOYEES AND OUR FOREIGN AGENTS AND SOURCES HAS HAD A HARMFUL EFFECT ON OUR INTELLIGENCE PROGRAM. EQUALLY SIGNIFICANT IS THE INCREASED RISK AND DANGER SUCH DISCLOSURES POSE TO THE MEN AND WOMEN WHO ARE SERVING THE UNITED STATES IN DIFFICULT ASSIGNMENTS ABROAD. IT IS OUTRAGEOUS THAT DEDICATED PEOPLE ENGAGED OR ASSISTING IN U.S. FOREIGN INTELLIGENCE ACTIVITIES CAN BE ENDANGERED BY A FEW INDIVIDUALS WHOSE AVOWED PURPOSE IS TO DESTROY THE EFFECTIVENESS OF ACTIVITIES AND PROGRAMS DULY AUTHORIZED BY THE CONGRESS.

MR. CHAIRMAN, RECENT WORLD EVENTS HAVE DRAMATICALLY DEMONSTRATED THE IMPORTANCE OF MAINTAINING A STRONG AND EFFECTIVE INTELLIGENCE APPARATUS. THE INTELLIGENCE COMMUNITY MUST HAVE BOTH THE MATERIAL AND THE HUMAN RESOURCES NEEDED TO ENHANCE ITS ABILITY TO MONITOR THE MILITARY ACTIVITIES OF OUR ADVERSARIES AND TO PROVIDE INSIGHTS INTO THE POLITICAL, ECONOMIC, AND SOCIAL FORCES WHICH WILL SHAPE WORLD AFFAIRS IN THE 1980'S. IT IS PARTICULARLY IMPORTANT THAT EVERY EFFORT BE MADE TO PROTECT OUR INTELLIGENCE OFFICERS AND SOURCES. IT IS IMPERATIVE THAT THE CONGRESS CLEARLY AND FIRMLY DECLARE THAT THE UNAUTHORIZED DISCLOSURE OF THE IDENTITIES OF OUR INTELLIGENCE OFFICERS AND THOSE ALLIED IN OUR EFFORTS WILL NO LONGER BE TOLERATED. THE PRESIDENT HAS EXPRESSED HIS DETERMINATION TO "INCREASE OUR EFFORTS TO GUARD AGAINST DAMAGE TO OUR CRUCIAL INTELLIGENCE SOURCES AND OUR METHODS OF COLLECTION, WITHOUT IMPAIRING CIVIL AND CONSTITUTIONAL RIGHTS." WE RECOGNIZE THAT LEGISLATION IN THIS AREA MUST BE CAREFULLY DRAWN; IT MUST SAFEGUARD THE NATION'S INTELLIGENCE CAPABILITIES WITHOUT IMPAIRING THE FIRST AMENDMENT RIGHTS OF AMERICANS OR INTERFERING WITH CONGRESSIONAL OVERSIGHT.

MR. CHAIRMAN, AT THIS POINT I WOULD LIKE TO MAKE CLEAR FOR THE RECORD THE DAMAGE THAT IS BEING CAUSED BY THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE IDENTITIES. I WOULD THEN LIKE TO ADDRESS BRIEFLY SEVERAL FALLACIES AND MISCONCEPTIONS THAT HAVE CREPT INTO PUBLIC DISCUSSION AND DEBATE ABOUT THE PROBLEM. FINALLY, I WILL DEAL WITH THE ISSUE OF HOW A LEGISLATIVE REMEDY CAN BE STRUCTURED SO AS TO DISCOURAGE THESE UNAUTHORIZED DISCLOSURES WITHOUT IMPAIRING THE RIGHTS OF AMERICANS OR INTERFERING WITH CONGRESSIONAL OVERSIGHT.

OBVIOUSLY, SECURITY CONSIDERATIONS PRECLUDE MY CONFIRMING OR DENYING SPECIFIC INSTANCES OF PURPORTED IDENTIFICATION OF U.S. INTELLIGENCE PERSONNEL. SUFFICE IT TO SAY THAT A SUBSTANTIAL NUMBER OF THESE DISCLOSURES HAVE BEEN ACCURATE. THE DESTRUCTIVE EFFECTS OF THESE DISCLOSURES HAVE BEEN VARIED AND WIDE-RANGING.

OUR RELATIONS WITH FOREIGN SOURCES OF INTELLIGENCE HAVE BEEN IMPAIRED. SOURCES HAVE EVINced INCREASED CONCERN FOR THEIR OWN SAFETY. SOME ACTIVE SOURCES, AND INDIVIDUALS CONTEMPLATING COOPERATION WITH THE UNITED STATES, HAVE TERMINATED OR REDUCED

THEIR CONTACT WITH US. SOURCES HAVE QUESTIONED HOW THE UNITED STATES GOVERNMENT CAN EXPECT ITS FRIENDS TO PROVIDE INFORMATION IN VIEW OF CONTINUING DISCLOSURES OF INFORMATION THAT MAY JEOPARDIZE THEIR CAREERS, LIBERTY AND VERY LIVES.

MANY FOREIGN INTELLIGENCE SERVICES WITH WHICH WE HAVE IMPORTANT LIAISON RELATIONSHIPS HAVE UNDERTAKEN REVIEWS OF THEIR RELATIONS WITH US. SOME IMMEDIATELY DISCERNIBLE RESULTS OF CONTINUING DISCLOSURES INCLUDE REDUCTION OF CONTACT AND REDUCED PASSAGE OF INFORMATION. IN TAKING THESE ACTIONS, SOME FOREIGN SERVICES HAVE EXPLICITLY CITED DISCLOSURES OF INTELLIGENCE IDENTITIES.

WE ARE INCREASINGLY BEING ASKED TO EXPLAIN HOW WE CAN GUARANTEE THE SAFETY OF INDIVIDUALS WHO COOPERATE WITH US WHEN WE CANNOT PROTECT OUR OWN OFFICERS FROM EXPOSURE. YOU CAN IMAGINE THE CHILLING EFFECT IT MUST HAVE ON A SOURCE TO ONE DAY DISCOVER THAT THE INDIVIDUAL WITH WHOM HE HAS BEEN IN CONTACT HAS BEEN OPENLY IDENTIFIED AS A CIA OFFICER.

THE PROFESSIONAL EFFECTIVENESS OF OFFICERS SO COMPROMISED IS SUBSTANTIALLY AND SOMETIMES IRREPARABLY DAMAGED. THEY MUST

REDUCE OR BREAK CONTACT WITH SENSITIVE COVERT SOURCES. CONTINUED CONTACT MUST BE COUPLED WITH INCREASED DEFENSIVE MEASURES THAT ARE INEVITABLY MORE COSTLY AND TIME-CONSUMING. SOME OFFICERS MUST BE REMOVED FROM THEIR ASSIGNMENTS AND RETURNED FROM OVERSEAS AT SUBSTANTIAL COST. YEARS OF IRREPLACEABLE AREA EXPERIENCE AND LINGUISTIC SKILL ARE LOST. REASSIGNMENT MOBILITY OF THE COMPROMISED OFFICER IS IMPAIRED. AS A RESULT, THE POOL OF EXPERIENCED CIA OFFICERS IS BEING REDUCED. SUCH LOSSES ARE DEEPLY FELT IN VIEW OF THE FACT THAT, IN COMPARISON WITH THE INTELLIGENCE SERVICES OF OUR ADVERSARIES, WE ARE NOT A LARGE ORGANIZATION. REPLACEMENT OF OFFICERS THUS COMPROMISED IS DIFFICULT AND, IN SOME CASES, IMPOSSIBLE. ONCE AN OFFICER'S IDENTITY IS DISCLOSED, MOREOVER, COUNTERINTELLIGENCE ANALYSIS BY ADVERSARY SERVICES ALLOWS THE OFFICER'S PREVIOUS ASSIGNMENTS TO BE SCRUTINIZED, PRODUCING AN EXPANDED PATTERN OF COMPROMISE THROUGH ASSOCIATION. SUCH DISCLOSURES ALSO SENSITIZE HOSTILE SECURITY SERVICES AND FOREIGN POPULATIONS TO CIA PRESENCE, MAKING OUR JOB FAR MORE DIFFICULT. FINALLY, SUCH DISCLOSURES CAN PLACE INTELLIGENCE PERSONNEL AND THEIR FAMILIES IN PHYSICAL DANGER

FROM TERRORIST OR VIOLENCE-PRONE ORGANIZATIONS. I NEED ONLY CITE TO YOU THE RECENT DISCLOSURES IN JAMAICA BY LOUIS WOLF, ONE OF THE EDITORS OF THE COVERT ACTION INFORMATION BULLETIN, AND THE SUBSEQUENT ATTEMPTS MADE ON THE LIVES OF U.S. GOVERNMENT EMPLOYEES THERE.

MR. CHAIRMAN, IT IS ESSENTIAL TO BEAR IN MIND THAT THE COLLECTION OF INTELLIGENCE IS SOMETHING OF AN ART. THE SUCCESS OF OUR OFFICERS OVERSEAS DEPENDS TO A VERY LARGE EXTENT ON INTANGIBLE PSYCHOLOGICAL AND HUMAN CHEMISTRY FACTORS, ON FEELINGS OF TRUST AND CONFIDENCE THAT HUMAN BEINGS ENGENDER IN EACH OTHER, AND ON ATMOSPHERE AND MILIEU. UNAUTHORIZED DISCLOSURE OF IDENTITIES INFORMATION DESTROYS THAT CHEMISTRY. WHILE WE CAN DOCUMENT A NUMBER OF SPECIFIC CASES, THE COMMITTEE MUST UNDERSTAND THAT THERE IS NO WAY TO DOCUMENT THE LOSS OF POTENTIAL SOURCES WHO FAIL TO CONTACT US BECAUSE OF LACK OF CONFIDENCE IN OUR ABILITY TO PROTECT THEIR IDENTITIES.

MR. CHAIRMAN, IN A TIME WHEN HUMAN SOURCES OF INTELLIGENCE

ARE OF CRITICAL IMPORTANCE, THERE CAN BE NO DOUBT THAT UNAUTHORIZED DISCLOSURES OF IDENTITIES OF OUR OFFICERS, AGENTS, AND SOURCES CONSTITUTE A SERIOUS THREAT TO OUR NATIONAL SECURITY. THE THREAT MAY NOT BE AS DIRECT AND OBVIOUS AS THE DISCLOSURE OF MILITARY CONTINGENCY PLANS OR INFORMATION ON WEAPONS SYSTEMS. IT IS INDIRECT AND SOMETIMES HARD TO GRASP. BUT THE NET KEY RESULT IS DAMAGED INTELLIGENCE CAPABILITY AND REDUCED NATIONAL SECURITY.

THOSE WHO SEEK TO DESTROY THE INTELLIGENCE CAPABILITIES OF THE UNITED STATES, AND OTHERS, WHOSE OPPOSITION TO IDENTITIES LEGISLATION IS BASED UPON GENUINE CONCERN ABOUT FIRST AMENDMENT CONSIDERATIONS, HAVE PROPAGATED A NUMBER OF FALLACIES AND MISCONCEPTIONS. UNDERSTANDABLY, SOME OF THESE HAVE FOUND THEIR WAY INTO DISCUSSIONS OF IDENTITIES LEGISLATION BEFORE THE CONGRESS AND IN THE PRESS.

ONE OF THESE FALLACIES IS THAT ACCURATE IDENTIFICATION OF CIA PERSONNEL UNDER COVER CAN BE MADE MERELY BY CONSULTING PUBLICLY AVAILABLE DOCUMENTS, LIKE THE STATE DEPARTMENT'S BIOGRAPHIC REGISTER, AND THAT IDENTITIES LEGISLATION WOULD IMPINGE ON DISCUSSION

OF INFORMATION THAT IS IN THE PUBLIC DOMAIN. THIS IS ABSOLUTELY UNTRUE. THERE IS NO OFFICIAL UNCLASSIFIED LISTING ANYWHERE THAT IDENTIFIES UNDERCOVER CIA OFFICERS. THE INTELLIGENCE RELATIONSHIPS WHICH WE ARE SEEKING TO PROTECT ARE CLASSIFIED, AND A GREAT DEAL OF MONEY AND EFFORT IS EXPENDED TO MAINTAIN THEIR SECRECY. THE NAMES OF INDIVIDUALS WHO ARE INTELLIGENCE OFFICERS DO APPEAR IN CERTAIN UNCLASSIFIED DOCUMENTS, BUT THEY ARE NOT IDENTIFIED AS INTELLIGENCE OFFICERS. THIS IS CONSISTENT WITH OUR NEED TO ESTABLISH AND MAINTAIN COVER TO CONCEAL THE OFFICER'S INTELLIGENCE AFFILIATION. THE STATE DEPARTMENT BIOGRAPHIC REGISTER, AN UNCLASSIFIED DOCUMENT UNTIL 1975, AND SIMILAR DOCUMENTS CANNOT BE USED, WITHOUT ADDITIONAL SPECIALIZED KNOWLEDGE AND SUBSTANTIAL EFFORT, TO MAKE ACCURATE IDENTIFICATIONS OF INTELLIGENCE PERSONNEL. IT IS ONLY BECAUSE OF THE DISCLOSURE OF SENSITIVE INFORMATION BASED ON PRIVILEGED ACCESS AND MADE BY FAITHLESS GOVERNMENT EMPLOYEES WITH THE PURPOSE OF DAMAGING U.S. INTELLIGENCE EFFORTS, THAT THE PUBLIC HAS BECOME AWARE OF INDICATORS IN THESE DOCUMENTS THAT CAN SOMETIMES BE USED TO DISTINGUISH CIA OFFICERS. IT IS

NOTEWORTHY, HOWEVER, THAT THESE INDICATORS DO NOT INVARIABLY LEAD TO CORRECT IDENTIFICATIONS. THE SUBSTANTIAL NUMBER OF ACCURATE IDENTIFICATIONS THAT ARE BEING MADE BY THE COVERT ACTION INFORMATION BULLETIN LONG AFTER THE BIOGRAPHIC REGISTER CEASED TO BE PUBLICLY AVAILABLE INDICATES THAT THESE DISCLOSURES ARE BASED ON EXTENSIVE ADDITIONAL INVESTIGATION, PRESUMABLY USING MANY OF THE SAME TECHNIQUES AS ANY INTELLIGENCE SERVICE USES IN ITS COUNTERINTELLIGENCE EFFORTS. IN THIS REGARD I WOULD LIKE TO QUOTE TO YOU FROM THE SENATE REPORT:

"...[T]HE COMMITTEE REJECTED THE CONTENTION THAT THE IDENTITIES OF IMPERFECTLY COVERED INTELLIGENCE PERSONNEL ARE ... PART OF THE PUBLIC RECORD. THEY ARE NOT. THOSE SEEKING TO LEARN THEM WITHOUT THE USE OF CLASSIFIED INFORMATION MUST FREQUENTLY ENGAGE IN PHYSICAL SURVEILLANCE, IN SEARCH OF PERSONNEL RECORDS, IN INTERVIEWS WITH NEIGHBORS AND FORMER COLLEAGUES. ALL OF THIS AMOUNTS TO A COMPREHENSIVE COUNTERINTELLIGENCE EFFORT. IT MAY BE THAT ONE DOES NOT HAVE TO BE OR TO HAVE BEEN AN INTELLIGENCE OFFICER IN ORDER TO LEARN AND REVEAL THE

IDENTITIES OF AMERICAN UNDERCOVER AGENTS. BUT IN THAT CASE ONE MUST OFTEN BEHAVE AS A COUNTERINTELLIGENCE OFFICER, USING SYSTEMATIC INVESTIGATIVE TECHNIQUES, AGAINST THE UNITED STATES. THE COMMITTEE [SSCI] HAS DECIDED THAT CERTAIN IDENTITIES SHOULD BE PROTECTED BOTH AGAINST BETRAYAL OF CLASSIFIED INFORMATION AND AGAINST SUCH SELF-APPOINTED COUNTERSPIES."

ANOTHER FALLACY WIDELY CIRCULATED BY OPPONENTS OF IDENTITIES LEGISLATION IS THAT PROHIBITION OF THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE IDENTITIES WOULD STIFLE DISCUSSION OF IMPORTANT INTELLIGENCE AND FOREIGN POLICY ISSUES. THIS SIMPLY IS NOT SO. IDENTITIES LEGISLATION IS NOT DESIGNED TO FORESTALL CRITICISM OF INTELLIGENCE ACTIVITIES, PREVENT THE EXPOSURE OF WRONGDOING, OR "CHILL" PUBLIC DEBATE ON INTELLIGENCE AND FOREIGN POLICY MATTERS. RATHER, SUCH LEGISLATION WOULD PROTECT A NARROW, ESSENTIAL ELEMENT OF OUR NATION'S FOREIGN INTELLIGENCE PROGRAMS FOR WHICH THE CONGRESS APPROPRIATES TAXPAYER DOLLARS YEAR AFTER YEAR. IN THIS

REGARD, IT IS IMPORTANT TO RECALL THAT VIRTUALLY ALL OF THE
LEGITIMATE OFFICIAL AND UNOFFICIAL EXAMINATIONS OF INTELLIGENCE
ACTIVITIES WHICH HAVE TAKEN PLACE OVER THE PAST SEVERAL YEARS HAVE
BEEN ACCOMPLISHED WITHOUT THE REVELATION OF INTELLIGENCE
IDENTITIES OF THE KIND WE ARE SEEKING TO PROTECT. EXTENSIVE
PUBLIC AND CONGRESSIONAL SCRUTINY AND CRITICISM OF INTELLIGENCE
ACTIVITIES HAS TAKEN PLACE WITHOUT RECOURSE TO WHOLESALE
DISCLOSURE OF THE NAMES OF INTELLIGENCE PERSONNEL. MR.
CHAIRMAN, IDENTITIES LEGISLATION IS DESIGNED TO DISCOURAGE
ACTIVITY THAT THREATENS THE VERY LIFEBLOOD OF OUR NATION'S
INTELLIGENCE APPARATUS. I URGE THE SUBCOMMITTEE TO EXAMINE
CLOSELY THE CLAIMS OF THOSE WHO CONTEND THAT THERE ARE
LEGITIMATE REASONS FOR THE UNAUTHORIZED DISCLOSURE OF
INTELLIGENCE IDENTITIES AND THAT SUCH DISCLOSURES ARE IN THE
PUBLIC INTEREST. THESE CLAIMS ARE WITHOUT MERIT AND MUST BE
REJECTED WHEN WEIGHED AGAINST REAL AND CERTAIN DAMAGE TO THE
NATIONAL INTEREST.

ANOTHER SERIOUS MISCONCEPTION WHICH HAS ARISEN IN
CONNECTION WITH THE DEBATE OVER IDENTITIES LEGISLATION IS THE

CONTENTION THAT SUCH A STATUTE WOULD PREVENT LEGITIMATE "WHISTLE-BLOWING" BY INDIVIDUALS WHOSE INTENT IS TO EXPOSE ALLEGED ILLEGALITY OR IMPROPRIETY. A PROPERLY DRAFTED STATUTE WILL HAVE NO SUCH EFFECT. PROVISION CAN BE MADE TO ENSURE THAT THE TRANSMITTAL OF INFORMATION TO THE HOUSE AND SENATE INTELLIGENCE COMMITTEES IS NOT COVERED BY THE STATUTE'S PROHIBITIONS, AND WE SUPPORT LANGUAGE SUCH AS THAT CONTAINED IN SUBSECTION 502(D) OF H.R. 5615. IDENTITIES LEGISLATION, THEREFORE, NEED NOT IMPACT AT ALL ON THOSE WHOSE LEGITIMATE PURPOSE IS TO REPORT ALLEGED WRONGDOING.

STILL ANOTHER MISCONCEPTION IS THE CONTENTION THAT PASSAGE OF IDENTITIES LEGISLATION WOULD SPELL THE END OF EFFORTS TO ENACT COMPREHENSIVE INTELLIGENCE CHARTER LEGISLATION. IT HAS BEEN SUGGESTED THAT THE INTELLIGENCE COMMUNITY WOULD LOSE INTEREST IN A COMPREHENSIVE CHARTER IF AN IDENTITIES BILL WERE TO BE ENACTED SEPARATELY. MR. CHAIRMAN, THE COMMITMENT OF THE INTELLIGENCE COMMUNITY TO COMPREHENSIVE CHARTER LEGISLATION IS WELL KNOWN AND HAS BEEN STATED OFTEN. I STATE IT AGAIN BEFORE YOU TODAY. WE

SINCERELY REGRET THAT IT WAS NOT POSSIBLE TO PROCEED WITH A FULL CHARTER BILL THIS YEAR. THE INTELLIGENCE COMMUNITY'S INTEREST IN CHARTER LEGISLATION WILL NOT EVAPORATE UPON PASSAGE OF A SEPARATE IDENTITIES BILL. IDENTITIES LEGISLATION IS URGENTLY NEEDED AND SHOULD PROCEED ON ITS OWN MERIT. IT MUST NOT BE HELD HOSTAGE TO COMPREHENSIVE CHARTER LEGISLATION AND BE MADE TO WAIT FOR THE 97TH CONGRESS TO CONVENE.

MR. CHAIRMAN, I WOULD LIKE NOW TO DISCUSS HOW IDENTITIES LEGISLATION CAN BE STRUCTURED SO AS TO EFFECTIVELY PROSCRIBE THE MOST DAMAGING UNAUTHORIZED DISCLOSURES WITHOUT IMPAIRING THE RIGHTS OF AMERICANS OR INTERFERING WITH CONGRESSIONAL OVERSIGHT.

CONGRESS SHOULD ENACT LEGISLATION WHICH WILL FULLY REMEDY THE PROBLEMS WE FACE. PASSAGE OF A STATUTE THAT IS TOO LIMITED IN ITS COVERAGE, THAT COULD BE EASILY CIRCUMVENTED, OR WHICH WOULD GO UNENFORCED BECAUSE OF UNMEETABLE BURDENS OF PROOF WOULD BE COUNTER-PRODUCTIVE. SUCH A STATUTE WOULD GIVE THE IMPRESSION OF SOLVING THE PROBLEM WITHOUT ACTUALLY DOING SO.

LEGISLATION IN THIS AREA SHOULD, FIRST OF ALL, HOLD CURRENT AND FORMER GOVERNMENT EMPLOYEES AND OTHERS WHO HAVE HAD AUTHORIZED

ACCESS TO CLASSIFIED IDENTITIES INFORMATION TO A HIGHER STANDARD THAN PERSONS WHO HAVE NOT HAD SUCH ACCESS. SUCH INDIVIDUALS, BECAUSE OF THEIR EMPLOYMENT RELATIONSHIPS OR OTHER POSITIONS OF TRUST, CAN LEGITIMATELY BE HELD ACCOUNTABLE FOR THE DELIBERATE DISCLOSURE OF ANY IDENTITY THEY KNOW, OR HAVE REASON TO KNOW, IS PROTECTED BY THE UNITED STATES.

WITH REGARD TO SUCH INDIVIDUALS, THE LEGISLATION SHOULD REQUIRE PROOF THAT A DISCLOSURE IS MADE WITH CULPABLE KNOWLEDGE, OR WITH KNOWLEDGE OF SUFFICIENT FACTS TO MAKE THE AVERAGE PERSON AWARE OF THE NATURE AND GRAVITY OF HIS ACTIONS. THIS IS AN IMPORTANT ELEMENT BECAUSE IT MUST DESCRIBE A STATE OF MIND WHICH WILL SUPPORT THE ATTACHMENT OF CRIMINAL SANCTIONS, AND AT THE SAME TIME BE CAPABLE OF PROOF IN THE KINDS OF DISCLOSURE CASES WHICH HAVE BEEN DAMAGING. IF A PERSON WITH AUTHORIZED ACCESS DISCLOSES INFORMATION KNOWING THAT IT IDENTIFIES AN INTELLIGENCE OFFICER UNDER COVER, THAT PERSON SHOULD BE CONSIDERED TO HAVE ACTED WITH CULPABLE KNOWLEDGE. THE KNOWLEDGE FORMULATION MUST NOT BE SO DIFFICULT OF PROOF AS TO RENDER THE

STATUTE USELESS. WE WOULD OPPOSE, THEREFORE, ANY REQUIREMENT SUCH AS THE ONE CONTAINED IN REPRESENTATIVE ASPIN'S BILL, H.R. 6820, FOR THE GOVERNMENT TO PROVE THAT THE SPECIFIC INFORMATION DISCLOSED WAS ACQUIRED DURING THE COURSE OF THE INDIVIDUAL'S OFFICIAL DUTIES.

MR. CHAIRMAN, A STATUTE IN THIS AREA, IF IT IS TO BE EFFECTIVE, MUST ALSO COVER THOSE WHO HAVE NOT HAD AN EMPLOYMENT OR OTHER RELATIONSHIP OF TRUST WITH THE UNITED STATES INVOLVING AUTHORIZED ACCESS TO CLASSIFIED IDENTITIES INFORMATION.

ADDITIONAL SAFEGUARDS ARE IN ORDER WITH RESPECT TO THE BROADER COVERAGE WHICH IS SOUGHT BY THE ADMINISTRATION. I WILL TOUCH UPON THESE IN THE CONTEXT OF DISCUSSING THE SPECIFICS OF THE TWO BILLS RECENTLY REPORTED BY BOTH HOUSE AND SENATE INTELLIGENCE OVERSIGHT COMMITTEES, H.R. 5615 AND S. 2216 RESPECTIVELY. THESE BILLS WERE REPORTED LATE LAST MONTH FOLLOWING THE JAMAICAN INCIDENTS DESCRIBED EARLIER IN MY TESTIMONY. THEY GO A LONG WAY IN ATTEMPTING TO FASHION AN EFFECTIVE LEGISLATIVE REMEDY.

BOTH THE HOUSE AND SENATE VERSIONS CREATE THREE CATEGORIES OF THE OFFENSE OF DISCLOSURES OF INTELLIGENCE IDENTITIES:

A. DISCLOSURES OF A "COVERT AGENT" BY PERSONS WHO HAVE OR HAVE NOT HAD AUTHORIZED ACCESS TO CLASSIFIED INFORMATION THAT IDENTIFIES SUCH A COVERT AGENT. THIS CATEGORY COVERS PRIMARILY DISCLOSURE BY INTELLIGENCE AGENCY EMPLOYEES AND OTHERS WHO GET ACCESS TO CLASSIFIED INFORMATION THAT DIRECTLY IDENTIFIES OR NAMES AGENTS AND PERSONS UNDER COVER.

B. DISCLOSURE OF A "COVERT AGENT" BY PERSONS WHO HAVE LEARNED THE IDENTITY AS A RESULT OF AUTHORIZED ACCESS TO CLASSIFIED INFORMATION. THIS CATEGORY COVERS DISCLOSURES BY ANY PERSON WHO LEARNS THE IDENTITY OF A COVERT AGENT AS A RESULT OF GOVERNMENT SERVICE OR OTHER GOVERNMENT RELATIONSHIP AND ACCESS TO CLASSIFIED INFORMATION THAT DOES NOT IDENTIFY OR NAME A SPECIFIC AGENT OR PERSON UNDER COVER. FOR EXAMPLE, THIS WOULD COVER THE STATE DEPARTMENT EMPLOYEE WHO LEARNS THAT THE CIA OCCUPIES A CERTAIN PART OF A GIVEN EMBASSY BUILDING.

C. DISCLOSURE OF A "COVERT AGENT" BY ANYONE WHO MAKES THE DISCLOSURE IN THE COURSE OF AN EFFORT TO DISCLOSE COVERT

AGENTS WITH INTENT TO IMPAIR OR IMPEDED INTELLIGENCE ACTIVITIES (HOUSE VERSION) OR AS PART OF A PATTERN OF ACTIVITIES INTENDED TO IDENTIFY AND EXPOSE COVERT AGENTS WITH REASON TO BELIEVE THAT SUCH ACTIVITIES WILL IMPAIR OR IMPEDE FOREIGN INTELLIGENCE ACTIVITIES (SENATE VERSION). WHILE THE HOUSE AND SENATE INTELLIGENCE COMMITTEES VERSIONS DIFFER HERE, THIS CATEGORY IS INTENDED TO ENCOMPASS PERSONS LIKE LOUIS WOLF AND TO EXCLUDE "REPUTABLE" JOURNALISTS. I WILL DISCUSS THE DIFFERENCE IN THE HOUSE AND SENATE LANGUAGE MORE FULLY.

ALL THREE CATEGORIES OF THE OFFENSE HAVE, IN BOTH VERSIONS, SEVERAL COMMON ELEMENTS:

- A. FIRST, THE PERSON DISCLOSED MUST BE A "COVERT AGENT." THIS IS A DEFINED TERM IN BOTH VERSION AND INCLUDES
 - (1) OFFICERS AND EMPLOYEES OF INTELLIGENCE AGENCIES WHOSE IDENTITIES ARE CLASSIFIED AND WHO ARE SERVING OR HAVE, WITHIN THE LAST FIVE YEARS, SERVED OUTSIDE THE UNITED STATES;
 - (2) AGENTS AND SOURCES WHO ARE U.S. CITIZENS AND WHO RESIDE OUTSIDE THE U.S. OR WHO ARE AGENTS OF OR INFORMANTS TO THE

FOREIGN COUNTERINTELLIGENCE OR FOREIGN COUNTERTERRORISM COMPONENTS OF THE FBI, AND WHOSE IDENTITIES ARE CLASSIFIED INFORMATION; AND, (3) FOREIGN AGENTS AND SOURCES OF AN INTELLIGENCE AGENCY WHOSE INTELLIGENCE RELATIONSHIP TO THE UNITED STATES IS CLASSIFIED INFORMATION.

B. SECOND, THE DISCLOSURE MUST BE TO A PERSON NOT AUTHORIZED TO RECEIVE CLASSIFIED INFORMATION. THIS MEANS THAT THE GOVERNMENT WOULD HAVE TO PROVE THAT THE IDENTITY WAS REVEALED TO SOME UNCLEARED PERSON. THUS, SOME EMPLOYEE DISCLOSURES, SUCH AS DISCLOSURE BY A CIA EMPLOYEE OF A COVER IDENTITY TO SOMEONE IN THE COMMERCE DEPARTMENT WOULD NOT BE AN OFFENSE IF THE PERSON RECEIVING THE IDENTITY WAS CLEARED FOR ACCESS TO CLASSIFIED INFORMATION. THE CIA EMPLOYEE WOULD BE SUBJECT TO ADMINISTRATIVE DISCIPLINARY SANCTIONS, HOWEVER.

C. THIRD, THE COVER IDENTITY OF THE COVERT AGENT OR SUCH AGENT'S INTELLIGENCE RELATIONSHIP TO THE UNITED STATES MUST BE CLASSIFIED.

D. FORTH, THE PERSON MAKING THE DISCLOSURE MUST KNOW THAT THE UNITED STATES IS TAKING AFFIRMATIVE MEASURES TO CONCEAL THE COVERT AGENT'S INTELLIGENCE RELATIONSHIP TO THE UNITED STATES. AFFIRMATIVE MEASURES INCLUDE, BUT ARE NOT LIMITED TO, THE ESTABLISHMENT AND MAINTENANCE OF A COVER IDENTITY AND THE USE OF CLANDESTINE MEANS OF COMMUNICATION.

E. FINALLY, THE INFORMATION DISCLOSED WHICH IDENTIFIES ANY COVERT AGENT NEED NOT BE CLASSIFIED INFORMATION. ANY INFORMATION WHICH IDENTIFIES A COVERT AGENT CAN BE USED TO ESTABLISH THE OFFENSE IF THE OTHER ELEMENTS ARE PRESENT. THIS IS PARTICULARLY IMPORTANT UNDER THE THIRD CATEGORY OF THE OFFENSE WHICH DOES NOT REQUIRE THE GOVERNMENT TO PROVE THAT THE PERSON MAKING THE DISCLOSURE HAD AUTHORIZED ACCESS TO CLASSIFIED INFORMATION. THUS, UNDER THIS CATEGORY, IF ALL THE OTHER ELEMENTS ARE PRESENT, THE GOVERNMENT WOULD BE ABLE TO ESTABLISH THE OFFENSE EVEN IF THE DEFENDANT CLAIMS HE OBTAINED THE INFORMATION FROM PUBLICLY AVAILABLE SOURCES.

THE ONLY DIFFERENCE IN THE SUBSTANTIVE OFFENSES CREATED BY THE HOUSE AND SENATE VERSIONS IS FOUND IN THE CATEGORY WHICH IS INTENDED PRIMARILY TO COVER NONEMPLOYEES AND WHICH DOES NOT REQUIRE A SHOWING THAT THE PERSON MAKING THE DISCLOSURE HAD AUTHORIZED ACCESS TO THE CLASSIFIED INFORMATION.

THE HOUSE VERSION PROVIDES IN SUBSECTION 501(c) THAT--

"WHOEVER, IN THE COURSE OF AN EFFORT TO IDENTIFY AND EXPOSE COVERT AGENTS WITH THE INTENT TO IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES, DISCLOSES, WITH THE INTENT TO IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES, TO ANY INDIVIDUAL NOT AUTHORIZED TO RECEIVE CLASSIFIED INFORMATION...."

THIS FORMULATION CONTAINS A DUAL INTENT REQUIREMENT. UNDER IT THE GOVERNMENT WOULD HAVE TO PROVE THAT THE DISCLOSURE WAS MADE IN THE COURSE OF AN EFFORT TO IDENTIFY AND EXPOSE COVERT AGENTS WITH THE INTENT TO IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES, AND THAT THE ACTUAL DISCLOSURE OF THE COVERT AGENT WAS MADE WITH THE INTENT TO IMPAIR OR IMPEDE SUCH FOREIGN

INTELLIGENCE ACTIVITIES. THE DEPARTMENT OF JUSTICE OBJECTS TO THIS FORMULAITON FOR THE FOLLOWING REASONS. FIRST THERE COULD BE VERY REAL DIFFICULTIES IN PROVING INTENT IN SOME SITUATIONS WHERE THE RECORD MAY NOT BE AS CLEAR AS IT IS WITH PHILIP AGEE OR COVERT ACTION INFORMATION BULLETIN. SECONDLY, THE DEPARTMENT IS CONCERNED THAT SUCH A SUBJECTIVE INTENT STANDARD WILL IMPERMISSIBLY "CHILL" SPEECH AND PRESS CRITICISM OF CIA IN OTHER AREAS AS A RESULT OF FEAR THAT SUCH CRITICISM WOULD BE EVIDENCE OF INTENT TO IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES.

THE SENATE VERSION PROVIDES IN SUBSECTION 501(c) THAT--

"WHOEVER, IN THE COURSE OF A PATTERN OF ACTIVITIES INTENDED TO IDENTIFY AND EXPOSE COVERT AGENTS AND WITH REASON TO BELIEVE THAT SUCH ACTIVITES WOULD IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES, DISCLOSES ANY INFORMATION THAT IDENTIFIES AN INDIVIDUAL AS A COVERT AGENT TO ANY INDIVIDUAL NOT AUTHORIZED TO RECEIVE CLASSIFIED INFORMATION...."

FIRST, IN CONTRAST THE THE HOUSE VERSION, THE SENATE VERSION HAS ONLY A SINGLE INTENT STANDARD WHICH WOULD BE EASIER TO PROVE.

UNDER THE SENATE LANGUAGE, THE GOVERNMENT WOULD ONLY HAVE TO PROVE THAT THE DISCLOSURE OCCURRED IN THE COURSE OF A PATTERN OF ACTIVITIES INTENDED TO IDENTIFY AND EXPOSE COVERT AGENTS, AND WOULD NOT HAVE TO SHOW THAT THERE WAS INTENT TO IMPAIR OR IMPEDE FOREIGN INTELLIGENCE ACTIVITIES. SECOND, THE GOVERNMENT WOULD HAVE TO SHOW THAT THE PERSON MAKING THE DISCLOSURE HAD REASON TO BELIEVE THAT SUCH PATTERN OF ACTIVITIES WOULD IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES. THIS ELEMENT WOULD BE EASIER TO PROVE THAN THE SECOND INTENT ELEMENT IN THE HOUSE VERSION ("INTENT TO IMPAIR OR IMPEDE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES") SINCE THE ELEMENT REQUIRED IS AN "OBJECTIVE" ONE, BASED ON WHAT A REASONABLE MAN WOULD BE EXPECTED TO KNOW. UNDER SUCH A STANDARD THE U.S. ATTORNEY GENERAL MUST CONVINCE A JURY THAT A REASONABLE MAN SHOULD KNOW THAT IMPAIRMENT OF FOREIGN INTELLIGENCE WOULD RESULT FROM DISCLOSURES LIKE THOSE MADE BY COVERT ACTION INFORMATION BULLETIN. FINALLY, THE "PATTERN OF ACTIVITIES" LANGUAGE OF THE SENATE VERSION REQUIRES MORE THAN PROOF OF JUST A SINGLE EFFORT AT DISCLOSURES, AS UNDER THE HOUSE

VERSION. WHILE THIS SENATE LANGUAGE MAY MEAN THAT A SINGLE FIRST-TIME DISCLOSURE STANDING ALONE WOULD NOT CONSTITUTE A "PATTERN OF ACTIVITIES," IT PROVIDES THE NECESSARY PROTECTION TO ASSURE THE PRESS THAT ONE-TIME DISCLOSURES FOR "LEGITIMATE" PURPOSES ARE NOT COVERED. HOWEVER, THE "PATTERN OF ACTIVITIES" DOES NOT NECESSARILY HAVE TO AMOUNT TO A SERIES OF DISCLOSURES, AND COULD BE ESTABLISHED BY SHOWING THE INVESTIGATIVE ACTS DESIGNED TO IDENTIFY AND EXPOSE COVERT AGENTS.

BOTH THE SENATE AND HOUSE VERSION HAVE CERTAIN DEFENSES IN COMMON:

A. PRIOR PUBLIC ACKNOWLEDGMENT OR REVELATION BY THE UNITED STATES OF THE INTELLIGENCE RELATIONSHIP THAT HAS BEEN DISCLOSED IS A DEFENSE.

B. THERE IS A BAR TO ACCOMPLICE OR CONSPIRACY PROSECUTION OF PERSONS WHO HAVE NOT HAD AUTHORIZED ACCESS TO CLASSIFIED INFORMATION UNLESS THOSE PERSONS ACT SO AS TO MEET THE ELEMENT EMBODIED IN THE THIRD CATEGORY OF THE OFFENSE. THUS, A NEWSMAN COULD NOT BE PROSECUTED AS AN ACCOMPLICE OF OR FOR

CONSPIRACY WITH A CLEARED EMPLOYEE UNLESS THE NEWSMAN ALSO MEETS THE STANDARDS OF THE THIRD CATEGORY OF THE OFFENSE.

MR. CHAIRMAN, THE SENATE BILL STRIKES THE APPROPRIATE BALANCE BETWEEN THE NEED FOR IMMEDIATE LEGISLATIVE RELIEF AND LEGITIMATE FIRST AMENDMENT CONCERNS. AS REPORTED, S. 2216 PROVIDES THE GOVERNMENT WITH AN EFFECTIVE TOOL TO PROSECUTE BOTH PRESENT AND FORMER INTELLIGENCE COMMUNITY AND GOVERNMENT EMPLOYEES AS WELL AS THOSE MISGUIDED INDIVIDUALS OUTSIDE THE INTELLIGENCE COMMUNITY AND GOVERNMENT WHO TAKE IT UPON THEMSELVES TO DESTROY THE FOREIGN INTELLIGENCE APPARATUS OF OUR NATION.

MR. CHAIRMAN, THERE IS A PRESSING NEED FOR EFFECTIVE LEGISLATION TO DISCOURAGE UNAUTHORIZED DISCLOSURES OF INTELLIGENCE IDENTITIES. THE CREDIBILITY OF OUR COUNTRY IN ITS RELATIONSHIPS WITH FOREIGN INTELLIGENCE SERVICES AND AGENT SOURCES, THE PERSONAL SAFETY AND WELL-BEING OF PATRIOTIC AMERICANS SERVING THEIR COUNTRY, AND THE PROFESSIONAL EFFECTIVENESS AND MORALE OF OUR COUNTRY'S INTELLIGENCE OFFICERS ARE ALL AT STAKE.

AS MATTERS NOW STAND THE IMPUNITY WITH WHICH PROTECTED INTELLIGENCE IDENTITIES MAY BE EXPOSED IMPLIES A GOVERNMENTAL

POSITION OF NEUTRALITY. IT SUGGESTS THAT U.S. INTELLIGENCE OFFICERS ARE "FAIR GAME" FOR THOSE MEMBERS OF THEIR OWN SOCIETY WHO TAKE ISSUE WITH THE EXISTENCE OF CIA OR FIND OTHER PERVERSE MOTIVES FOR MAKING THESE UNAUTHORIZED DISCLOSURES. SPECIFIC STATUTORY PROHIBITION OF SUCH ACTIVITY IS CRITICAL TO THE MAINTENANCE OF AN EFFECTIVE FOREIGN INTELLIGENCE SERVICE. IT IS IMPERATIVE THAT A MESSAGE BE SENT THAT THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE IDENTITIES IS INTOLERABLE.

ON BEHALF OF ADMIRAL TURNER, I URGE YOU TO PROCEED TO REPORT LEGISLATION THAT WILL PROVIDE AN EFFECTIVE REMEDY.